

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERMAN TAMRAT,
Plaintiff,

v.

SONOMA COUNTY MAIN ADULT
DETENTION FACILITY
ADMINISTRATION, et al.,
Defendants.

Case No. [20-cv-08503-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed

factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

LEGAL CLAIMS

Plaintiff presents allegations of mistreatment while in custody.¹

The Due Process Clause of the Fourteenth Amendment protects a post-arraignment pretrial detainee from the use of excessive force that amounts to punishment. *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (citing *Bell v. Wolfish*, 441 U.S. 520, 535-39 (1979)). To prove an excessive force claim under § 1983, a pretrial detainee must show only that the "force purposely or knowingly used against him was objectively unreasonable." *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015). "A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." *Id.* "A court (judge or jury) cannot apply this standard mechanically." *Id.* "[O]bjective

¹ It appears that plaintiff was a pretrial detainee during the relevant time.

1 reasonableness turns on the “facts and circumstances of each particular case.” *Id.*
2 (quoting *Graham v. Connor*, 490 U.S. at 396).

3 A non-exhaustive list of considerations that may bear on the reasonableness of
4 the force used include “the relationship between the need for the use of force and the
5 amount of force used; the extent of the plaintiff’s injury; any effort made by the officer to
6 temper or to limit the amount of force; the severity of the security problem at issue; the
7 threat reasonably perceived by the officer; and whether the plaintiff was actively
8 resisting.” *Kingsley*, 135 S. Ct. at 2473.

9 Because the *Kingsley* standard applicable to excessive force claims by pretrial
10 detainees is purely objective, it does not matter whether the defendant understood that
11 the force used was excessive or intended it to be excessive. *Castro v. Cnty. of Los*
12 *Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016) (en banc). A pretrial detainee can prevail
13 by providing “‘*objective* evidence that the challenged governmental action is not rationally
14 related to a legitimate governmental objective or that it is excessive in relation to that
15 purpose.’” *Id.* (quoting *Kingsley*, 135 S. Ct. at 2473-74)) (emphasis in original).

16 A claim for a violation of a pretrial detainee’s right to adequate medical care arises
17 under the Fourteenth Amendment rather than the Eighth Amendment. *See Gordon v.*
18 *County of Orange*, 888 F.3d 1118, 1122 & n.4 (9th Cir. 2018). The claim is evaluated
19 under an objective deliberate indifference standard.

20 [T]he elements of a pretrial detainee’s medical care claim
21 against an individual defendant under the due process clause
22 of the Fourteenth Amendment are: (i) the defendant made an
23 intentional decision with respect to the conditions under which
24 the plaintiff was confined; (ii) those conditions put the plaintiff
25 at substantial risk of suffering serious harm; (iii) the defendant
26 did not take reasonable available measures to abate that risk,
even though a reasonable official in the circumstances would
have appreciated the high degree of risk involved—making the
consequences of the defendant’s conduct obvious; and (iv) by
not taking such measures, the defendant caused the plaintiff’s
injuries.

27 *Id.* at 1125. With regard to the third element, a defendant’s conduct must be objectively
28 unreasonable – “a test that will necessarily ‘turn[] on the facts and circumstances of each

particular case.” *Id.* (citation omitted). The four-part test described in *Gordon* requires plaintiffs to prove more than negligence, but less than subjective intent – something akin to reckless disregard. *Id.*

Plaintiff states that on October 25, 2019, in an act of protest he pushed his food tray through the slot in his door to the ground and placed his hands through the slot. Defendant Sergeant Alcala ordered plaintiff to remove his hands from the slot and keep his hands in his cell. Plaintiff refused and Alcala attempted to rip loose plaintiff’s firm grip with the aid of defendant Deputy Mann. Alcala then began to hit plaintiff’s wrist with a closed fist and then hit plaintiff’s hand and knuckles with a flashlight and punched plaintiff in the face. Alcala and Mann then twisted plaintiff’s arms and banged them against the tray slot. As a result, plaintiff suffered injuries. These allegations are sufficient to state a claim against Alcala and Mann.

Plaintiff also presents general allegations of denial of medical and psychiatric care, retaliation, intimidation and harassment. He states that he has not received sufficient assistance from classification officials and grievance officials. However, he fails to provide any specific allegations with respect to these claims. These claims are dismissed with leave to amend.

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed no later than **April 23, 2021**, and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to file an amended complaint will result in this case only proceeding on the excessive force claim.

2. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed

1 "Notice of Change of Address," and must comply with the court's orders in a timely
2 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
3 pursuant to Federal Rule of Civil Procedure 41(b).

4 **IT IS SO ORDERED.**

5 Dated: March 23, 2021

6
7 /s/ Phyllis J. Hamilton

8 PHYLLIS J. HAMILTON
9 United States District Judge
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United States District Court
Northern District of California